IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3490 of 2007 (O&M)

Date of Decision: 19.10.2007

Ram Kishan & Anr. ...Appellants

Vs.

Narender Mohan & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Ajay Jain, Advocate,
for the appellants.

Mr.V.K.Jain, Senior Advocate,
with Mr.Prashant, Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

By way of separate order of even date passed in RSA No.3489 of 2007 titled Narender Mohan Vs. Hari Ram and Ors., the impugned judgments and decrees passed by the learned courts below have been ordered to be upheld.

In the present appeal, the appellant has merely challenged the

impugned part of the judgment and decree vide which the courts below have passed the decree for specific performance in favour of respondent No.2 herein to the exclusion of appellants and proforma respondent No.3 herein.

The contention of the learned counsel for the appellants is that it was Palia who had entered into an agreement of sale and therefore, the appellants being the legal heirs of Palia along with proforma respondent No.3 were entitled to equal shares with respondent 2 herein. This contention of the learned counsel for the appellants cannot be accepted as the reading of the judgment passed by the learned lower appellate court shows that respondent 2 herein was claiming his rights being the legal representative of Palia under a Will dated 16.7.1984. It was on account of the dispute between the parties that the proceedings before the learned lower appellate court were ordered to be stayed which were to be resumed after the validity of the Will was finally adjudicated. It was after upholding the Will that the learned courts below have been pleased to order that the sale deed be executed in favour of respondent No.2.

Learned counsel for the appellants contends that the learned courts below were in error in ordering the sale deed in favour of respondent No.2, by misreading the judgment and decree passed in the case. The contention of the learned counsel for the appellants was that in the said case the dispute was with regard to the claim over the tenancy rights of Palia and the dispute qua the present land was not subject-matter of the said suit. In the said suit rights of the appellants and proforma respondent No.3 have

been duly upheld by the learned courts below and it has been held that all legal heirs were entitled to inherit the tenancy rights of Palia. However, the claim qua 48 kanals agreed to be sold was declined. The contention of the learned counsel for the appellant further is that at the time of filing of suit by Palia there was only an agreement to sell which did not transfer the title in favour of Patia so as to entitle him to bequeath his property under the Will. This decree having been passed after his death the appellants along with proforma respondent No.3 were also entitled to share in the sale, therefore, the findings of the learned courts below cannot be sustained. This plea of the learned counsel for the appellants cannot be accepted . The intention of the Executor is to bequeath the property which he has or may acquire in his personal capacity, in favour of beneficiary and once the Will has been upheld any right flowing to Palia in his right has to be inherited by the beneficiary. The courts below were right in ordering that the sale deed be executed in favour of respondent No.2 alone, in exclusion to appellants. No substantial question of law arises in this appeal.

No merit. Dismissed.

(Vinod K.Sharma)
19.10.2007 Judge
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